F. Applicable Period For Refund or Credit

G.S. 105-266.1 provides for refunds of overpayment of taxes provided a request for refund is made within three years after the date set by statute for the filing of the return or within six months from the date of payment of the tax, whichever is later. **(Effective January 1, 2008,** the statute of limitations for requesting a refund is the later of three years after the due date of the return or two years after the payment of the tax.) There are no provisions in the Revenue Laws for refunding overpayments after the applicable period. When using Form E-599M, the completed form must be presented to the Department's representative within three years of the date of the return on which the overpayment was made in order to be allowable.

G. Penalty For Submitting a False Claim

Taxpayers and tax preparers should be aware that G.S. 105-236(7) and G.S. 105-236(9a) impose felony penalties on willful attempts to evade or defeat taxes imposed and on persons who aid, assist, procure, counsel or advise the preparation, presentation or filing of claims that they know to be false or fraudulent.

H. Cause of Action

1. The customer refund procedures contained in this Bulletin provide the first course of remedy available to purchasers seeking a refund of over-collected sales or use taxes from the seller. A cause of action against the seller for the over-collected sales or use taxes does not accrue until a purchaser has provided written notice to a seller and the seller has had sixty days to respond. Such notice to the seller must contain the information necessary to determine the validity of the request.

2. In connection with a purchaser's request from a seller of over-collected sales or use taxes, a seller shall be presumed to have a reasonable business practice if, in the collection of such taxes, the seller uses either a provider or a system, including a proprietary system, that is certified by the State and the seller has remitted to the State all taxes collected less any deductions, credits, or collection allowances.

History Note: Authority G.S. 105-164.16; 105-164.22; 105-236(7) and (9a);
105-264; 105-266; 105-266.1;
Issued: June 1, 1996;
Revised: April 1, 2008; March 1, 2007; July 1, 2005;
February 1, 2004; June 1, 2002; October 1, 1999; March 1, 1997.

34-22 DIPLOMATIC TAX EXEMPTION PROGRAM

A. The Diplomatic Tax Exemption Program is administered by the Office of Foreign Missions (OFM). This Program provides sales and use tax exemption to certain official personnel from foreign countries who are stationed in the United States while working as diplomats, consular officers, or staff members at foreign embassies and consulates, and other organizations such as the United Nations. Not all foreign missions and their personnel are entitled to tax exemption, because this privilege is based on the principle of reciprocity and not all foreign countries grant such tax exemption to American Embassies and personnel.

B. Foreign officials who are entitled to tax exemptions are issued a Tax Exemption Card by OFM. For identification purposes, the individual's name, photograph, mission employed by, expiration date, and protocol identification number are provided on the card. There are two different types of Tax Exemption Cards: Personal and Official/Mission. Each card will have one of two different levels of sales and use tax exemption. (The Tax Exemption Card does not allow its holder to purchase gas or utilities free of tax.) The level and kind of exemption are designed to match the levels of exemption encountered by American Embassies in foreign countries. The level of tax exemption is indicated by the color of the card and the written explanation in the colored box.

1. The **Personal Tax Exemption Card** is used at the point of sale for exemption from state and local sales, restaurant, lodging, and similar taxes normally charged to a customer. The Personal Card bears the photograph and identification of a duly accredited consulate, embassy, or eligible international organization employee who is entitled to the tax exemption privileges as stated on the card. This card is only for the personal use of the bearer whose picture appears on the front of the card.

    a. The cards with a blue stripe exempt the bearer from all state and local taxes nationwide. The cards with a yellow stripe require the bearer to purchase a minimum amount of goods or services before the bearer is entitled to tax exemption. The requirements may range from a specified purchase amount or could exempt certain sectors from exemption, with the most common exclusion being hotel taxes.

    b. When a cardholder presents a yellow card, with a minimum purchase requirement, the total of all items purchased in a single transaction must equal or exceed the minimum purchase level. For example, if a foreign official has a card with a minimum purchase requirement of $150, he or she would be required to pay the sales or use tax on a bill of $145. However, the same individual would be exempt from all taxes on a bill of $160. Also, if two foreign officials are traveling together but they have separate rooms and separate bills, they cannot combine the bills under one total in order to qualify for tax exemption.

2. The **Mission Tax Exemption Card** is used for official purchases of a foreign consulate or embassy. The Mission Card bears the photograph and identification of a consulate, embassy, or international organization employee who has been allowed official purchasing privileges for that office. This card is for official purchases only. All purchases must be made in the name of the mission and paid for by mission check or credit card (not cash or personal check). For example, the purchasing agent might use the card to buy office supplies or to book twenty hotel rooms for a visiting official delegation from that foreign country, providing the reservation is in the name of the Mission and the bill is paid for by a mission check or credit card. The Mission Tax Exemption Card is not transferable, and not to be used for personal purchases. (There are instances where a mission tax exemption cardholder would not have access to a personal tax exemption card.)

    a. The cards with a blue stripe exempt the bearer from all state and local taxes nationwide. The cards with a yellow stripe require the bearer to purchase a minimum amount of goods or services before the bearer is entitled to tax exemption. The requirements may range from a specified purchase amount or could exempt certain sectors from exemption, with the most common exclusion being hotel taxes.

    b. When a cardholder presents a yellow card, with a minimum purchase requirement, the total of all items purchased in a single transaction must equal or exceed the minimum purchase level. For example, if a foreign official has a card with a minimum purchase requirement of $150, he or she would be required to pay the sales or use tax on a bill of $145. However, the same individual would be exempt from all taxes on a bill of $160. Also, if two foreign officials are traveling together but they have separate rooms and separate bills, they cannot combine the bills under one total in order to qualify for tax exemption.

A brochure which contains examples of the various tax exemption cards and information about the Diplomatic Tax Exemption Program may be obtained from the Taxpayer Assistance Division of the North Carolina Department of Revenue. Additional information can be obtained at www.state.gov/ofm/tax/. At the bottom of the webpage, click on The Diplomatic Customer in PDF.

C. The card holder should be allowed an exemption from tax to the extent noted on the card. The vendor should retain a copy of the purchaser's card and the invoice in his records as documentation to support the exemption. If unable to secure a copy of the card, the vendor should record the name, address, date of sale, Department of State Tax Exemption Number shown on the card, and expiration date of the card in his records and on the customer's invoice.

D. Vendors are required to collect tax from diplomatic missions and their personnel unless the purchaser presents his Personal or Mission Tax Exemption Card. The exemption card may not be accepted by a vendor if:

1. The amount of the purchase is less than any minimum level shown on the purchaser's card;

2. The personal or mission tax exemption card has expired;

3. The individual purchaser or the person who purchases on behalf of the mission is not the person whose photograph appears on the tax exemption card; or

4. The individual or mission making the purchase is not also the payer of record.

History Note: Authority: G.S. 105-164.4; 105-164.13; 105-264;
Issued: October 15, 1998;
Revised: January 15, 2009; March 1, 2007; July 1, 2005; June 1, 2002.

34-23 ALCOHOLIC BEVERAGES

A. Spirituous Liquor

1. **Effective October 1, 2005,** sales of spirituous liquor, other than mixed beverages, are subject to the combined general rate of tax as defined in G.S. 105-164.3(4a). **Prior to October 1, 2005,** such sales were subject to a 6% State rate of tax.

2. **"Spirituous liquor"** is defined in G.S. 105-113.68 to mean distilled spirits or ethyl alcohol, including spirits of wine, whiskey, rum, brandy, gin, and all other distilled spirits and mixtures of cordials, liqueurs, and premixed cocktails in closed containers for beverage use regardless of the dilution.

B. Mixed Beverages, Beer and Wine

1. Sales of mixed drinks and mixed beverages, including straight shots of spirituous liquor, by restaurants, bars and other similar establishments are subject to the general rate of State tax and any applicable local sales tax.

2. Sales of beer and wine, whether by the drink or in closed containers, are subject to the general rate of State tax and any applicable local sales tax.

3. A retailer who holds a wine shipper permit issued by the ABC Commission pursuant to G.S. 18B-1001.1 is considered to be engaged in business in North Carolina. The retailer is required to collect the State and applicable local sales or use tax on its retail sales of